D.B. I.T.Ref.No.69/1981

(Commission of Income Tax Vs. State Bank of Bikaner & Jaipur.)

DATE OF ORDER : 06.07.2006

Hon'ble Mrs. Gyan Sudha Misra,J.
Hon'ble Dr. Vineet Kothari, J.

Mrs.Parinitoo Jain, for the assessee-applicant.
Mr.PK Kasliwal, for the respondent-revenue.

This reference has been made by the Income Tax Appellate Tribunal, Jaipur Bench, Jaipur by order dated 29.1.1981 to answer as to whether on the facts and in the circumstances of the case, the Tribunal was justified in holding that expenses of Rs.1,71,791 (rupees one lac seventy one thousand seven hundred ninty one only) could be termed as entertainment expenses or could be treated as business development expenses.

The aforesaid question arose as the respondent State Bank of Bikaner & Jaipur (for short as "SBBJ") had claimed Rs.1,71,791/- as expenses towards entertainment as it was claimed as business development expenditure wholly allowable on the premise that Bank had to entertain the customers and other visitors who visited the Bank, who had to be entertained and this was essentially for the development and promotion of business of the Bank. The Income Tax Appellate Tribunal decided the question in favour of the respondent-assessee as it was held that although a sum of

Rs.1,71,791/- has been claimed as expenditure on entertainment to be treated as business development expenditure, it could not be held to be exorbitant as this amount had to be distributed towards 400 branches of SBBJ and if this amount would be bifurcated branchwise, then the average monthly expenditure on each branch towards entertainment would come to Rs.25/- to 30/- only per branch and, therefore, it was held by the Tribunal that this amount was reasonable to be claimed towards entertainment and it had to be treated towards business development and was held allowable expenditure. The appeal of the assessee was thus allowed.

The department of Income Tax under the old provisions of Income Tax Act filed an application for reference of the matter before the High Court as no appeal at that point of time in the year 1980 was provided under the Act and, therefore, the aforesaid question of law was referred to this Court wherein question arose as to whether sum of Rs.1,71,791/- could be termed as entertainment expenses towards business development or it had to be treated as entertainment expenditure allowable subject to limits prescribed under the Act.

Having heard learned counsel for the parties and on perusal of the order of the Tribunal, we do not feel that the Tribunal was justified in even referring the matter at all to this court and it was fit to be rejected by the Tribunal itself since the Tribunal seems to

have ignored the fact that the Tribunal had given cogent and convincing reason while allowing the expenses towards entertainment expenditure as business development expenditure as Rs.1,71,791/- is not an expenditure in just one branch of SBBJ but it has been spent by 400 branches of the respondent-Bank which has righlty been held to be reasonable and not exorbitant or lavish in any manner. It is no doubt true that if the expenditure on entertainment by the assessee could be treated as lavish expenditure or flashy in any manner, the same cannot be treated as expenditure towards business development even if that be in the nature of entertainment but this question obviously will have to be decided on the facts of each case and merely because the expenses incurred in this reference by the respondent-assessee is Rs.1,71,791/-,the same cannot be treated as precedent for other years as it is Assessing Authority who will have to use his judicious discretion to decide as to whether amount claimed towards entertainment and thereby business development could be so treated in the instant matter.

We are of the view that sum of Rs.1,71,791/- incurred on the entertainment of customers or other visitors by 400 branches cannot be treated lavish in any manner and, therefore, we do not feel that the Tribunal's reference was justified. The reference is answered in negative against the revenue and matter thus be treated as disposed of.

Accordingly this matter is disposed of.

[Dr.Vineet Kothari],J. [Gyan Sudha Misra],J.

s.rawat/-